

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

<p>Thelma M. Ehredt, Appellant,</p> <p>v.</p> <p>Scott County Board of Review, Appellee.</p>	<p style="text-align: center;">ORDER</p> <p>Docket No. 13-82-1167 Parcel No. 041851101</p> <p>Docket No. 13-82-1168 Parcel No. 041851103</p> <p>Docket No. 13-82-1169 Parcel No. 041851105</p> <p>Docket No. 13-82-1170 Parcel No. 041851106</p> <p>Docket No. 13-82-1171 Parcel No. 041851107</p> <p>Docket No. 13-82-1172 Parcel No. 041851108</p> <p>Docket No. 13-82-1173 Parcel No. 041851109</p>
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On July 9, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Thelma M. Ehredt was represented by Attorney Stephen Wing, Dwyer & Wing, P.C., Davenport, Iowa. Assistant County Attorney Robert Cusak represents the Scott County Board of Review. Deputy Assessor Ed Vieth appeared on behalf of the Board of Review at hearing. The Appeal Board, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Thelma Ehredt is the owner of the Oaktree Gardens subdivision located on 184th Avenue, Butler Township, Scott County, Iowa. The subdivision has eleven sites platted in 1976. Ehredt protested to the Board of Review claiming the assessments of all of the properties were not equitable as compared with assessments of other like property; that the properties were assessed for more than authorized by law; and that there was an error in the assessments under Iowa Code Sections 441.37(1)(a)(1), (2), and (4). The error claim essentially asserted the properties were misclassified under section 441.37(1)(a)(3). The Board of Review denied the petitions.

Ehredt then appealed seven of the lots' assessments to this Board reasserting her claims. On appeal, Ehredt contends these properties should be classified agricultural realty and the properties are over-assessed.

The lots appealed to this Board are vacant and classified residential. Four associated parcels, which include a commercial apartment complex, a steel utility building, hay shed, and outlots containing a sewage lagoon, were not appealed and this Board does not have jurisdiction to consider their assessments. § 441.37A(1). The following chart identifies the subject parcels appealed.

Docket	Parcel	Legal Description	Site Size (Acres)	2013 AV
13-82-1167	41851101	Oaktree Gardens Lot 1	0.90	\$12,000
13-82-1168	41851103	Oaktree Gardens Lot 3	0.94	\$13,200
13-82-1169	41851105	Oaktree Gardens Lot 5	1.00	\$15,000
13-82-1170	41851106	Oaktree Gardens Lot 6	1.11	\$18,300
13-82-1171	41851107	Oaktree Gardens Lot 7	1.02	\$15,600
13-82-1172	41851108	Oaktree Gardens Lot 8	1.04	\$16,200
13-82-1173	41851109	Oaktree Gardens Lot 9	1.00	\$15,000

The Oaktree Gardens development has a private, dirt/gravel road that provides access to Lots 1-9 from 290th Street. Additionally, Lots 5-8 have frontage to Scott Park Road and Lot 9 has frontage to

290th Street, both of which are paved roads. (Exhibit B). Although the development was platted in 1976, none of the lots have been sold.

Because evaluation of Ehredt's over-assessment claims relies, in part, on the classification of the subject properties, we first consider the evidence related to Ehredt's misclassification claim.

Ehredt called County Assessor Dale Denklau to testify. Denklau stated that he drove by the subject properties and while he acknowledges hay is currently growing on some of them, it appears the sites are suitable for residential development. Denklau testified that it is more likely this property would be developed for residential purposes and not agricultural purposes. Further, in his opinion, the current use of growing hay is not being done in good faith for intended profit.

Dean Marten, a neighbor and farmer, also testified for Ehredt. His residence is located adjacent to the Oaktree Gardens development and he has farm ground that adjoins the subject development. Marten testified he farmed lots 4-9 of the subject properties in the past, growing oats, corn, hay, and beans but he has not farmed it since 1991. When he farmed the properties, he believed the sites were "mediocre" farm ground. Further, he does not believe the subject properties will be developed with residential improvements because Ehredt does not want any neighbors.

Thelma Ehredt testified on her own behalf. She explained that she purchased the properties in 1993 and since then constructed the pole buildings on Lot 4. She has never marketed the properties for sale for residential development. She also created a restrictive covenant and agreement not-to-sever Lots 2, 3, and 4, because the septic system located on Outlot B runs through these lots to her improved Lot 2. (Exhibit E).

Ehredt testified that because Lots 5-9 are "such a small parcel it is difficult to get someone to come in cut the hay." She testified she has no intent to sell these properties for residential use. She currently has a farmer who mows these lots. The farmer processes the hay giving Ehredt one cut, with the remaining cuts, which may be one or two based on the weather, going to the processor. While

Ehredt does not “make money,” she states she benefits from the hay grown on Lots 5-9. In her opinion, the hay crop she retains has a value of about \$500. She uses the hay to feed the two pleasure horses she has on her property.

Deputy Assessor Ed Vieth testified the Assessor’s Office did not dispute the subject sites had hay growing on them and that it was cut and baled. However, he does not believe this factor alone qualifies the properties for agricultural classification. It is his opinion the properties are not being used with an intent to profit.

Ultimately, we find Ehredt’s agricultural activity is limited primarily to her personal use and lacks any subjective or objective intent to generate profit, which is required to be classified agricultural. Because we do not find the subject properties should be agriculturally classified, we now turn to Ehredt’s other claim.

Ehredt was concerned with the significant increase in the assessment of the properties from 2010 to 2011. According to Ehredt, there was a 1000% increase in value. Denklaus testified about the assessment history of the subject property. Denklaus explained that in 2011, the county hired Vanguard Appraisal to revalue all rural residential properties and at that time, Vanguard determined the values were higher than the previous assessment. We note that according to the property record cards, the subject properties’ assessments had not changed from at least 2001 to 2010. Because it had been nearly a decade since the properties were revalued, this may partially explain the significant increases.

Ehredt asserts that because the 2011 assessment was erroneous, subsequent assessments based on this value are questionable. Sometime in 2012, the Assessor’s Office determined the assessments were incorrect and applied an adjustment to all of the sites, resulting in reductions of around 50% for the 2013 assessments. Deputy Assessor Ed Vieth testified that prior to the 2013 assessment, Ehredt spoke with Ron Beckenbaugh a former employee with the Assessor’s Office. Beckenbaugh agreed the properties were overassessed because they were unimproved, so he applied an adjustment to all of the

site values resulting in the 2013 assessments. The present appeals concern the 2013 assessment and, as such, this Board is concerned with whether Ehredt has established her property is over-assessed as of January 1, 2013. Iowa Admin. Code R. 701-71.1(1). Because of this, we do not find the 2011 revaluation relevant.

Ehredt submitted five properties she believed to be comparable in support of her claims. (Exhibits 13-17). One of the properties is classified agricultural is therefore not comparable. (Exhibit 16). The properties located in the Wildwood Addition appear to lack any independent means of access and are almost entirely covered with trees and brush. (Exhibits 13-15). In contrast, the subject parcels are easily accessed by paved highways and do not contain any significant amount of trees or brush. As a result, we believe these properties are not comparable to the subject parcels.

Only one of the comparable properties recently sold, 220th Ave, Butler Township. (Exhibit 17). The 1.23 acre residential parcel sits adjacent to a dwelling and sold for \$10,405 in March 2012. Although it appears to contain two silos and some trees, it is otherwise vacant. It is assessed at \$4000. No other information was provided about this sale or property. Without more, we cannot conclude if this property is comparable to the subject or if the sale price would accurately reflect the subject parcels' fair market value.

A local realtor, George Douglas Lockhart, testified for Ehredt. Lockhart testified it would unlikely there would be any single family development on Ehredt's lots. He expressed his opinion that the lots are not the best for raising anything other than hay and that any profit potential would be minimal. When asked if he had an opinion of market value for the sites, he stated that he really did not know, but he guessed a "maximum of maybe \$5,000 to \$10,000" for the individual subject sites and "probably closer to the \$5000 range." In the end, we do not find it necessary to recite all of Lockhart's testimony. Lockhart was clearly unfamiliar with the comparable properties Ehredt and the Board of Review submitted and testified that he did not complete a comparative market analysis or an appraisal

with adjusted sales to determine the market value of the subject properties. We find his valuation of the properties was not based on the statutory scheme for the assessment in Iowa Code section 441.21 and his testimony related to the properties' value was not competent or credible. Therefore, we give his testimony no consideration.

Marten testified that in his opinion, the "market value" of agricultural ground is about \$2500 per-acre, but an assessed value of \$5000 per acre for the subject properties would be reasonable. Marten provided other opinions regarding the potential development of the subject properties, their classification, and factors that he asserts would affect value. Marten did not provide any evidence or support for his opinions and, like Lockhart, we find he did not provide competent or credible evidence of the subject parcels' market value.

The Board of Review provided a map of three comparable sales it believed supported the 2013 assessments. (Exhibit H). Denklau testified the comparable properties were selected because they were located within a "reasonable distance" of the subject properties. Two of the properties submitted sold in 2002 and 2004, for this reason we do not consider them reliable in determining a 2013 market value. The third comparable property submitted by the Board sold in July 2013. However, Denklau testified this property is in an established development, and based on the map (Exhibit H), it is built around a lake, which may affect its sales price and market value. Moreover, these sales were unadjusted and there was no determination of market value for the subject properties. For these reasons, we give these sales no consideration.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds

presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

There is no presumption the assessed value is correct. § 441.37A(3)(a). However, Ehredt has the burden of proof. § 441.21(3). This burden may be shifted to the Board of Review if Ehredt offers competent evidence from two disinterested witnesses concerning the property's market value. *Id.* To be competent, the evidence must comply with the statutory scheme for property valuation for assessment purposes. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009). Because we found that Ehredt's witnesses did not offer competent evidence of the properties' fair market value, Ehredt has not shifted the burden. However, Ehredt may still prevail based on a preponderance of the evidence. § 441.21(3); *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). However, agriculturally classified property is valued based solely on productivity and net earning capacity. § 441.21(1)(e).

Ehredt asserts the property is misclassified and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE r. 701-71.1 et al. (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1).

Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, *all for intended profit*.

...

r. 701-71.1(3)(emphasis added).

Conversely, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods.

r. 701-71.1(4).

Hay is currently grown on Ehredt’s Lots 5-9, which are contiguous and she believes should be agriculturally classified. Ehredt exchanges half, to two-thirds, of the baled product for the labor involved with the cutting and baling. She uses her portion to feed horses she keeps on an associated parcel not subject to this appeal. Ehredt’s testimony indicated she did not make money from raising hay nor did she suggest she was operating these parcels with an eye toward or intent to make a profit

from her hay crop in the future. Rather, the current barter system in place for the labor of producing the baled hay is a mutually beneficial arrangement. While this activity may result in cost savings for Ehredt, a desire to reduce expenses is not synonymous with an intent to profit. An intent to profit is required for an agricultural classification. r. 701-71.1(3). For these reasons, we find that Ehredt has not shown the property should be classified agricultural.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Ehredt essentially asks that the assessments for the subject parcels be returned to the 2010 values. Ehredt relied on testimony from Lockhart and Marten but neither offered competent or credible evidence of the properties' fair market value as of January 1, 2013. Lockhart stated that he really did not know the market value of the individual subject sites, but he guessed a "maximum of maybe \$5,000 to \$10,000" and "probably closer to the \$5000 range." However, we did not find him knowledgeable about the properties submitted as comparable, and moreover, he did not provide any evidence to support his opinion of market value such as a comparable market analysis or an appraisal with adjusted sales. Likewise, Marten did not provide any basis for his testimony regarding the properties' value.

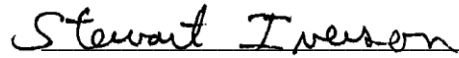
The majority of the properties Ehredt offered as comparable were not actually comparable to the subject parcels. One differed in classification and others had significant differences that rendered them not comparable. Only one property recently sold and there was no other evidence or testimony regarding this sale to determine whether it would accurately reflect the fair market value of the subject parcels. Ehredt did not offer any other evidence of the fair market value of the subject properties, and therefore failed to show they were over assessed.

THE APPEAL BOARD ORDERS the 2013 assessment and classification of Ehredt's properties (Lots 1, 3, 5-9) located on 184th Avenue, Butler Township, Scott County, Iowa, set by the Scott County Board of Review, are affirmed.

Dated this 1st day of August, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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